

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CP0287
)	HUD NO.: N/A
FERDINAND A. ULIT)	EEOC NO.: N/A
)	ALS NO.: 09-0555
Petitioner.)	
)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Munir Muhammad and Nabi Fakroddin presiding, upon Ferdinand A. Ulit's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CP0287; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following grounds:

LACK OF SUBSTANTIAL EVIDENCE and LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on August 4, 2008. The Petitioner alleged that Mercy Works Occupational Medicine Program ("Mercy Works") denied him the full and equal enjoyment of its facilities and services because of his age, 65 (Count A), race, Asian (Count B), national origin, Philippines (Count C), his physical disabilities, which were a right shoulder disorder (Count D) and diabetes (Count E), and in retaliation for having opposed unlawful discrimination (Count F), in violation of Sections 5-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On September 2, 2009 the Respondent dismissed Counts A, B, C, & F of the Petitioner's charge for Lack of Substantial Evidence and Counts D & E of the charge for Lack of Jurisdiction. On October 6, 2009, the Petitioner timely filed his Request.
2. Mercy Works maintains contracts with various companies to provide occupational health services to the employees of those companies; those companies are referred to as "client companies." Mercy Works only provides occupational health services to the employees of its client companies.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. On December 8, 2006, the Petitioner was employed by one of Mercy Works' client companies. The Petitioner's employer at that time referred the Petitioner to Mercy Works for a pre-employment physical examination. In March 2007, the Petitioner's employment with this client company ceased.
4. On February 6, 2008, the Petitioner was not employed by any of Mercy Works' client companies.
5. On February 6, 2008, the Petitioner went to Mercy Works for the purpose of receiving a physical examination.
6. The Petitioner did not receive a physical examination from Mercy Works.
7. In his charge and his Request, the Petitioner contends Mercy Works denied his request for a physical examination because of his age, race, national origin, physical disabilities, and in retaliation for having opposed unlawful discrimination in September 2007. The Petitioner argues he was entitled to have received a physical examination in February 2008 because he had previously received a physical examination from Mercy Works in December 2006. The Petitioner further argues he was entitled to receive a physical examination from Mercy Works because he is a private contractor and the Illinois Secretary of State had assigned the Petitioner an employer number. Finally, the Petitioner contends the Respondent's investigator was biased.
8. In its Response, the Respondent asks the Commission to sustain the dismissal of Counts A, B, C, & F for Lack of Substantial Evidence because the Petitioner provided no evidence that he either had a contract with Mercy Works for the provision of occupational health services, or that the Petitioner was employed by a client company of Mercy Works, or that he was otherwise qualified to receive a pre-employment physical examination from Mercy Works. Further, the Respondent found no substantial evidence of similarly situated individuals outside of the Petitioner's protected classes who were treated more favorably under similar circumstances, nor did the Respondent find any substantial evidence of retaliation.
9. The Respondent asks the Commission to sustain the dismissal of the disability discrimination claims alleged in Counts D & E for Lack of Jurisdiction because the Petitioner failed to provide proof that he was disabled within the meaning of the Act. Initially, the Petitioner was requested by the Respondent to submit a completed Medical Questionnaire, or some other medical evidence, in order to demonstrate that the Petitioner was disabled within the meaning of the Act. The Petitioner failed to do so prior to the dismissal of his charge. The Respondent acknowledges in its Response that the Petitioner submitted a completed Medical Questionnaire in support of his Request. However, the Respondent argues the dismissal of Counts D & E should still be upheld because there is no substantial evidence Mercy Works

discriminated against the Petitioner either because of his disabilities or because of any perceived disabilities.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence and lack of jurisdiction.

If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, * 2 (March 7, 1995)(1995 WL 793258).

Further, when a complainant alleges disability discrimination, the complainant first has the burden of providing the Respondent with some sort of documentation from a medical professional, such as a completed Medical Questionnaire, so that the Respondent can determine whether or not the complainant is disabled. If the Respondent does not receive this medical documentation, then the Respondent will lack jurisdiction to investigate an allegation of disability discrimination. See 56 Ill. Admin. Code, Ch. II, § 2500.20(c); see also 775 ILCS § 1-103(I).

As to Count A, B, C, & F of the charge, the Commission finds no substantial evidence of discrimination based on age, race, or national origin, or of retaliation. Mercy Works submitted undisputed evidence that it only provides medical services to the employees of its client companies. There is no evidence that the Petitioner was employed by a client company in February 2008.

The Petitioner's argument that he was a private contractor and thus his own employer is unpersuasive because the Petitioner has not presented any evidence that he, in his capacity as an "employer," was one of Mercy Works' client companies. Finally, there is no substantial evidence that any individuals outside of the Petitioner's protected classes were treated more favorably by Mercy Works under similar circumstances.

As to Counts D & E, the Respondent properly dismissed the Petitioner's disability claims for lack of jurisdiction because the Petitioner failed to submit medical evidence of his disability to the Respondent in a timely manner. Further, even if the Petitioner had submitted the completed Medical Questionnaire in a timely manner, the Commission finds no substantial evidence that the Petitioner was denied medical treatment because of his disabilities. As discussed above, the Petitioner presented no evidence that he was entitled to receive a physical examination from Mercy Works in February 2008.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Mercy Works Occupational Medicine Program, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 14th day of April 2010.

Commissioner Munir Muhammad

Commissioner Nabi Fakroddin